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HEATHER L. NEWTON and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HEATHER L. NEWTON, individually and on
behalf of others similarly situated,

Plaintiff,

v.

AMERICAN DEBT SERVICES, INC., et al,
Defendants.

Case No.: 3:11-cv-03228 EMC

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AND JUDGMENT**

Hearing Date: June 30, 2016
Hearing Time: 1:30 p.m.
Room: Courtroom 5, 17th Floor
Action filed: June 29, 2011
Trial date: Vacated

1 **I. INTRODUCTION**

2 Before the Court is Plaintiff Heather L. Newton's unopposed Motion for Final Approval of
3 Class Action Settlement. Docket No. 344.

4 On June 9, 2015, on a contested motion for class certification, the Court certified a class in this
5 matter. Docket No. 313. On September 9, 2015, Plaintiff and Defendants Global Client Solutions, LLC
6 ("Global") and Rocky Mountain Bank & Trust ("RMBT") (all, "the Parties") reached a settlement in
7 private mediation with the Honorable Rebecca Westerfield. See Docket No. 322, p. 6, ll. 26.27. On
8 November 12, 2015, Plaintiff filed her Motion for Preliminary Approval of Class Action Settlement,
9 along with the Settlement Agreement and Release between Plaintiff Heather L. Newton and Defendants
10 Global Client Solutions, LLC and Rocky Mountain Bank & Trust ("Settlement Agreement"). Docket
11 Nos. 322, 323-1. On November 30, 2015, the Court ordered supplemental briefing as to certain issues
12 relating to the settlement, ordered certain changes to the parties' proposed Notice of Settlement, and
13 ordered Plaintiff to file under seal her attorneys' time records to support a lodestar calculation. See
14 Docket No. 330. In response, the Parties filed a joint supplemental brief and revised proposed Notice of
15 Settlement. Docket No. 331. Plaintiff also submitted a declaration attaching her attorneys' time
16 records, with an Administrative Motion to File under Seal. Docket No. 332. The Court held a hearing
17 on preliminary approval on December 17, 2015, and on January 15, 2016 granted Plaintiff's Motion for
18 Preliminary Approval of the Settlement; approved the form, content and manner of Notice of
19 Settlement; and approved CPT Group as Administrator for all aspects of the settlement. Docket No.
20 336.

21 In determining that the settlement merited preliminary approval, the Court previewed the factors
22 that ultimately will determine final approval, as set out in *Churchill Village, L.L.C. v. Gen. Elec.*, 361
23 F.3d 566, 575 (9th Cir. 2004): (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity,
24 and likely duration of further litigation; (3) the risk of maintaining class action status throughout the
25 trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the
26 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant;
27 and (8) the reaction of class members to the proposed settlement. The Court found that the first,
28 second, fourth, fifth and sixth factors weigh in favor of approval, the third factor is neutral, the seventh

1 factor is inapplicable and, because notice of settlement had not yet been given at that time, it was too
2 early to evaluate the eighth factor, the reaction of class members to the proposed settlement. Docket
3 No. 336, pp. 7-9.

4 CPT Group disseminated the approved Notice of Settlement on February 15, 2016. Docket No.
5 345, Skey Declaration, at ¶ 7. The deadline for objection was 90 days later, Docket No. 336, p. 12, ll.
6 6-7, and thus has passed. CPT Group received no written objections to the settlement. Docket No.
7 345, Skey Declaration, at ¶ 11. The Court received no objections to the settlement.

8 Now, having carefully considered Plaintiff's Motion for Final Approval of Class Action
9 Settlement, and the Settlement Agreement,

10 **IT IS HEREBY ORDERED THAT:**

11 1. Pursuant to this Court's class certification order of June 9, 2015 (Docket No. 313), the Class
12 has been defined as:

13 All consumers in California who paid QSS directly, or indirectly through ADS, for debt
14 settlement services during the four years preceding filing of the complaint, who opened a
15 Special Purpose Account with RMBT to be administered by Global, and did not receive a
full refund of all fees and charges paid to all Defendants.

16 2. For the reasons stated above and in the Court's Order of January 15, 2016 preliminarily
17 approving the settlement, the Court finally approves the Settlement Agreement set forth in the
18 November 12, 2015 Motion for Preliminary Approval of Class Action Settlement, Docket No. 322. The
19 Court finds the settlement negotiations were conducted at arms-length and in good faith among counsel
20 for the Parties, and that the terms of the Settlement Agreement are in all respects fair, reasonable, and
21 adequate as to each of the Parties and the Class Members, and are consistent and in compliance with all
22 requirements of Due Process and California law, as to, and in the best interests of, each of the Parties
23 and the Class Members.

24 3. No Class Members have filed timely requests for exclusion. The Class Members who did not
25 timely request exclusion are bound by this Final Order and Judgment and by the Settlement Agreement,
26 including the releases provided for in this Final Order and Judgment and in the Settlement Agreement.

27 4. The Notice of Settlement and the notice methodology that was implemented pursuant to the
28 Settlement Agreement and this Court's January 15, 2016 Order constituted the best practicable notice

1 under the circumstances. The notice provided due, adequate and sufficient notice of the settlement
2 approval proceedings and of the matters set forth in the proposed settlement, to all persons entitled to
3 receive notice, and constituted notice reasonably calculated to apprise Class Members of their right to
4 object to the proposed settlement and to appear at the Final Approval Hearing. The notice fully
5 satisfied the requirements of the Rule 23(e) of the Federal Rules of Civil Procedure, all applicable
6 requirements of due process and California law, and the January 15, 2016 Order of this Court.

7 5. The Court finds that Plaintiff's Counsel and Plaintiff adequately represented the Class
8 Members in this litigation.

9 6. The Settlement Agreement and this Final Order and Judgment shall be binding on, and have
10 res judicata and preclusive effect in, all pending and future lawsuits or other proceedings encompassed
11 by the Release in the Settlement Agreement, maintained by or on behalf of Plaintiff and all other
12 members of the Class.

13 7. Plaintiff Heather L. Newton and the Class Members, on behalf of themselves, their heirs,
14 executors, administrators, predecessors, successors and assigns, have released and forever discharged
15 the Released Parties from the Released Claims (as both those terms are defined in the Settlement
16 Agreement), and as to the Released Parties shall be forever barred from instituting, maintaining, or
17 prosecuting any action on the Released Claims.

18 8. Global and RMBT, on behalf of themselves, their heirs, executors, administrators,
19 predecessors, successors and assigns, have released and forever discharged the Plaintiff, Class
20 Members, and their attorneys from, and shall be forever barred from instituting, maintaining, or
21 prosecuting, any claims for fees, costs, indemnity or contribution.

22 9. Each and every term of the Settlement Agreement shall be binding upon, and inure to the
23 benefit of, Plaintiff and the other Class Members, Global and RMBT, and any of their successors and
24 personal representatives (in their capacities as such), which persons and entities are intended to be
25 beneficiaries of the Settlement Agreement.

26 10. The Parties shall be deemed to have agreed that the releases set forth in the Settlement
27 Agreement will be and may be raised as a complete defense to and will preclude any action or
28 proceeding based on the Released Claims, as that term is defined in the Settlement Agreement.

1 11. None of the above releases includes releases of claims to enforce the terms of the Settlement
2 Agreement.

3 12. The Court approves a class representative services award of \$7,500 to Plaintiff Heather L.
4 Newton, and an award of attorneys' fees of \$348,091, and costs of \$19,409, as set forth in Plaintiff's
5 Motion for Attorneys' Fees, Costs and Service Award, Docket No. 337.

6 13. Not later than fifteen (15) days after the Effective Date, as that term is defined in the
7 Settlement Agreement, Defendants Global Client Solutions, LLC and Rocky Mountain Bank & Trust
8 shall forward \$375,000.00 to the Administrator for restitution payments to the Class Members
9 designated in Exhibit 2 to the Settlement Agreement. Not later than forty (40) days after the Effective
10 Date as that term is defined in the Settlement Agreement, the Administrator shall distribute the
11 payments to the Class Members by first class mail. Pursuant to the terms of the Settlement Agreement,
12 the Administrator shall distribute the \$375,000 *pro rata* to each of the Class Members, including Class
13 Representative Heather L. Newton, according to the dollar amount each Class Member paid in fees to
14 all defendants combined, which dollar amounts are listed in Exhibit 2 to the Settlement Agreement.

15 14. To the extent that any part of the \$375,000.00 in class relief cannot be distributed, by reason
16 that the Class Member cannot be located using the procedures described in the Settlement Agreement,
17 or because the refund checks provided to Class Members are not negotiated within 90 days of mailing,
18 or for any other reason, the undistributed funds shall be donated, half to the Watsonville Law Center in
19 Watsonville, California, and half to the Katherine and George Alexander Law Center in San Jose,
20 California as *cy pres*.

21 15. Pursuant to the Settlement Agreement, Defendants Global Client Solutions, LLC and Rocky
22 Mountain Bank & Trust shall pay for administration, class representative service award, and attorneys'
23 fees and costs by delivering a check in the amount of \$375,000.00, addressed to and payable to the
24 Consumer Law Office of William E. Kennedy, not later than fifteen (15) days after the Effective Date.
25 Within fifteen (15) days of receiving the check, Attorney Kennedy in turn will forward a service award
26 payment of \$7,500.00 to Class Representative Heather L. Newton, and distribute the approved
27 attorneys' fees award of \$348,091, and costs award of \$19,409 among Plaintiff's Counsel.

1 16. Pursuant to the Settlement Agreement, Defendants Global Client Solutions, LLC and Rocky
2 Mountain Bank & Trust are jointly and severally responsible for payments of the sums ordered herein.

3 17. This action is dismissed on the merits and with prejudice as to Defendants Global Client
4 Solutions, LLC and Rocky Mountain Bank & Trust and this dismissal shall be without fees or costs to
5 any party, except as otherwise provided herein and in the Settlement Agreement. This action is
6 dismissed without prejudice as to Defendants American Debt Services, Inc. and Quality Support
7 Services, LLC.

8 18. The Settlement Agreement and the settlement provided for therein, and any proceedings
9 taken pursuant thereto, are not, and should not in any event be offered or received as evidence of, a
10 presumption, concession, or an admission of liability by Global, and RMBT; provided, however, that
11 reference may be made to this Settlement Agreement and the settlement provided for therein in such
12 proceedings as may be necessary to effectuate the provisions of this Settlement Agreement.

13 19. The Court directs the Parties and their counsel to implement and consummate the
14 Settlement Agreement in accordance with its terms and provisions, and authorizes the Parties, without
15 further approval from the Court, to agree to and adopt such amendments, modifications, and expansions
16 of the Settlement Agreement and all exhibits thereto as (i) shall be consistent in all material respects
17 with this Final Order and Judgment and (ii) do not limit the rights of Class Members.

18 20. Without affecting the finality of the Final Order and Judgment for purposes of appeal, the
19 Court retains jurisdiction over Global, RMBT, the Plaintiff, and the Class Members as to all matters
20 relating to the administration, consummation, enforcement, and interpretation of the terms of the
21 settlement and this Final Order and Judgment, and for any other necessary purposes.

22 This order disposes of Docket No. 344.

23 **IT IS SO ORDERED.**

24
25 Dated: July 1, 2016

26 Hon. Edward
27 United States

